IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2336 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

---

LALLUBHAI MORARABHAI LAD

Versus

NIRUBEN MAPUBHAI DHODIA

---

Appearance:
MR ZUBIN F BHARDA for Petitioner
NOTICE SERVED for Respondent No. 1
MR DARSHAN M PARIKH for Respondent No. 3

---

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.C.PATEL

Date of decision: 05/10/98

ORAL JUDGEMENT

(Per : Panchal, J.)

By means of filing this appeal under section 173

of the Motor Vehicles Act, 1988, the appellant who is owner of the vehicle, has questioned legality and validity of award dated June 13, 1995 rendered by the Chairman, Motor Accident Claims Tribunal (Main), Valsad District at Navsari, in M.A.C.Petition no. 576/87 by which the Tribunal has held that the limits of liability of the respondent no.3 - Insurance Company is only Rs.50,000/- while awarding a sum of Rs. 1,10,350/with interest thereon and costs as compensation, to the respondent no.1.

2. Deceased Madhubhai Dhodiabhai was a resident of Ghodiyapada, Taluka : Umergao. He was married to respondent no.1. He was serving as a peon in Irrigation Department and his total emoluments were Rs. 850/- per month. The respondent no.1 could not procreate child and, therefore, the deceased and respondent no.1 were offering prayers occasionally as per their faith and religious belief so as to have a child. The accident in question took place on July 13, 1987. On the date of accident, deceased Madhubhai and respondent no.1 had been to a religious place for offering prayers. After offering prayers, they were returning on foot and deceased was walking ahead of respondent no.1 on the public road at village Sanjan. At that time, truck bearing registration no. GTO-743 came from behind and hit Madhubhai Dhodia, as a result of which he sustained injuries and succumbed to the injuries on the spot. He was removed to Hospital, but the Doctor on duty declared him dead. According to the respondent no.1, driver of the truck was negligent in driving the vehicle and, therefore, respondent no.1 instituted M.A.C.Petition no. 576/87 before Motor Accident Claims Tribunal, Valsad at Navsari and claimed compensation of Rs. 2 lacs.

3. The respondent no.2, who was driving the truck, was impleaded as opponent no.1 in the claim petition; whereas the appellant who is owner of the truck in question, was impleaded as opponent no.2 in the claim petition. The respondent no.2 and the appellant appeared through their advocate, but did not file written statement. The respondent no.3 i.e. Insurance Company filed written statement at exh.23 and contended, inter-alia, that as the respondent no.2 had no valid driving licence to drive the truck, the Insurance Company was not liable to satisfy the claim made by respondent no.1. It was also pleaded that there was no negligence on the part of respondent no.2 in driving the vehicle and, therefore, the claim petition was liable to be dismissed.

4. Having regard to the pleadings of parties, the Tribunal raised necessary issues for determination. On appreciation of oral as well as documentary evidence, the Tribunal held that the respondent no.2 was rash and negligent in driving truck bearing registration No.GTO-743 because of which accident took place and deceased Madhubhai lost his life. The Tribunal took into consideration the evidence led by respondent no.1 regarding income of the deceased and assessed income of the deceased at Rs.973/- per month. The Tribunal deducted a sum of Rs.473/- from the said amount, which would have been spent by the deceased for himself and deduced that dependency benefit of Rs.500/- per month i.e. Rs.6,000/- per year was available to the respondent no.1. The deceased was aged about 28 years at the time of accident and, therefore, the Tribunal held that it was proper to apply multiplier of 15 to the facts of the case. Thus, under the head of dependency benefit, the Tribunal held that respondent no.1 was entitled to receive a sum of Rs. 90,000/- as compensation. To the said amount, a sum of Rs. 20,000/- was ordered to be added as compensation being conventional amount as well as Rs.350/- as conveyance charges which were incurred by respondent no.1 for taking the deceased to Hospital etc. In all, the Tribunal awarded a sum of Rs.1,10,350/- as compensation,to respondent no.1.

5. The Tribunal thereafter proceeded to consider the question as to who was liable to pay the compensation. The present appellant is owner of the truck and, therefore, the Tribunal held that the appellant was liable to pay the compensation, as respondent no.2 who was truck driver and who was employed by the appellant, was the wrong doer. During the course of hearing of the matter, respondent no.1, who was original claimant, could not procure or produce insurance policy. However, before dictation of judgment, learned Counsel representing the Insurance Company presented a purshis at Exh.32 stating that the vehicle in question was insured with it, but liability of the Insurance Company was limited to the extent of Rs. 50,000/-. Though the Insurance policy was not brought on record of the case, the Tribunal held that the extent of liability of Insurance Company was Rs.50,000/-. This finding has given rise to present appeal.

6. Learned Counsel for the appellant submitted that the record does not indicate that the vehicle was insured with limited liability, extent of which was Rs.50,000/and, therefore, Insurance Company also should be called upon to satisfy the award passed against the

appellant as well as respondent no.2. It was emphasised that under the provisions of Section 95(2)(a) of the Motor Vehicles Act, 1939, the extent of liability of Insurance Company is specified to be Rs. 1,50,000/- and, therefore, the Tribunal was not justified in holding that the appellant was liable to satisfy the whole award, but the limits of liability of Insurance Company was only Rs.50,000/-. Learned Counsel pleaded that the receipt of premium produced on record shows that the appellant had paid a sum of Rs. 306/- as premium instead of fixed amount of Rs. 200/- as premium and as the Insurance Company had collected an excess amount of Rs.100/- as premium, it should have held that liability of Insurance Company was to the extent of Rs. 1,50,000/- and the respondent no.3 was also liable to satisfy the full award passed against the appellant.

7. Learned Counsel for the appellant has not challenged the finding recorded by the Tribunal regarding negligence of the respondent no.2 while driving truck bearing registration no. GTO-743 on July 13, 1987. Similarly, computation of compensation payable to respondent no.1 is also not challenged by the learned Counsel for the appellant. Though sufficient time was granted to Mr. D.M.Parikh, learned Counsel appearing for Insurance Company, he has not been able to produce a copy of Insurance policy for perusal of the Court. It is an admitted fact that the vehicle was insured with respondent no.3 i.e. United India Insurance Company Ltd. and the said Insurance Company had been charging premium from the appellant. Even if say of the appellant that more premium was being charged from him is disbelieved, the extent of liability of Insurance Company will have to be determined on the basis of admitted fact that there was policy of insurance in force with respect to vehicle in question. Under the provisions of Section 95(1) read with Section 95(2)(b)(i) of the Motor Vehicles Act, 1939, the risk of third party is required to be covered to the extent of Rs. 1,50,000/- and, therefore, even if it is presumed that this was an Act policy, the liability of Insurance Company will have to be determined at Rs. 1,50,000/and not at Rs. 50,000/- as is held by the Tribunal. Under the circumstances, we hold that the Tribunal was not justified in concluding that the limits of liability of respondent no.3- Insurance Company was Rs. 50,000/- and we hold that statutory limit of liability being Rs. 1,50,000/-, the respondent no.3 Insurance Company is liable to satisfy the entire award of Rs.1,10,350/- made by the Tribunal against the appellant and respondent no.3, together with interest thereon and proportionate costs.

For the foregoing reasons, the appeal succeeds. It is held that the respondent no.3 i.e. United India Insurance Company Limited is also liable to satisfy the award made against the appellant and respondent no.2 by the Tribunal in M.A.C.Petition no. 576/87. The respondent no.3 is directed to deposit the amount as per this judgment in the Tribunal within six weeks from the date of receipt of writ. It is clarified that if any amount is deposited by the respondent no.3, the same shall be adjusted while making calculation of amount to be deposited by the Insurance Company. After the amount is deposited, the same shall be disbursed and invested as per the direction of the Tribunal given in the impugned award. The appeal is accordingly allowed, with no order as to costs.

******

(patel)